**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**RSA No. 96 of 2006.**

**Date of decision: 12.12.2006.**

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Jatinder Singh Kashyap ... Appellant

Versus

Duni Chand & Anr. … Respondents

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*Coram :*

The Hon'ble Mr. Justice V.K. Ahuja, Judge.

Whether approved for reporting?[1] No.

For the appellant : Mr. Ajay Kumar, Advocate.

For the respondents: Mr. B.S. Chauhan, Advocate.

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**V.K. Ahuja, J.**

This is a second appeal filed by the appellant against the judgment and decree of the Court of learned District Judge (Forests), Shimla, dated 17.12.2005, vide which the appeal filed by the appellant against the judgment and decree of the Court of learned Sub Judge (4),Shimla, dated 30.10.2001, dismissing the suit of the plaintiff for mandatory and permanent injunction, was dismissed and those findings were confirmed.

Briefly stated the facts of the case are that the appellant/plaintiff filed a suit for perpetual and mandatory injunction alleging that there is apple orchard of the plaintiff on the land comprised in Khasra Nos. 18,19,20 and 23. On the western side, there is a road abutted by Khasra No. 22. The plaintiff has fenced his orchard and residential house. The land of Khasra No. 22 is in the ownership of the State of Himachal Pradesh and the defendants and the plaintiff had been

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[1]Whether reporters of Local Papers may be allowed to see the judgment? Yes.

using it for plying of trucks, jeeps and cars. The defendants have started digging pits for erection of RCC pillars on the land comprised in Khasra No. 22 and have also raised three pillars in the Government land during the holidays.

The defendants pleaded that the residential house of the plaintiff is 30 feet away from the common path. There exists a common path which is not more than 20 feet at the spot and defendants have raised R.C.C. construction on their own land and have not encroached upon any land of the Government.

The suit was tried by the learned trial Court and it was held that the Civil Court jurisdiction was barred in view of Section 171 of the Himachal Pradesh Land Revenue Act since the proceedings under Section 163 of the Himachal Pradesh Revenue Act have been initiated against the defendants by the State Government.

On appeal, the learned first appellate Court agreed with the findings of learned trial Court in regard to the bar under Section 171 of the Himachal Pradesh Land Revenue Act. However, it also concluded that the plaintiff can approach the Civil Court if his legal rights have been adversely affected. It was observed that the plaintiff has not pleaded as to how his legal rights have been affected. It was also observed that the suit was not filed in a representative capacity. The suit was also not filed for removal of nuisance after fulfilling the requirement of Section 91 C.P.C. Thus, it affirmed the findings of the learned trial Court on some additional grounds also.

I have heard Mr. Ajay Kumar, Advocate, for the appellant and Mr. B.S. Chauhan, Advocate, for the respondents and have gone through the record.

The submissions made by the learned counsel for the appellant/plaintiff were that though the land was owned by the State Government and it was admittedly a public road, the State was not

impleaded as a party, as no relief was claimed against the State Government. In regard to the substantial question of law which arises in this case, it was mainly submitted that the mere fact that the proceedings under Section 163 of the Himachal Pradesh Land Revenue Act, there is no bar to the Civil Court to take cognizance of the suit and grant appropriate relief. Thus, it was submitted that the plaintiff's case was duly proved from the statement by his witnesses, therefore, this appeal is liable to be accepted since the Courts below have misread the oral evidence led by the parties.

On the other hand, the learned counsel for the respondents submitted that the plaintiff had not pleaded his grievances or injuries to him and no substantial loss was allegedly caused to the plaintiff who had failed to plead the same and, therefore, the relief was rightly declined by both the Courts below.

On a perusal of the impugned judgment of the learned first appellate Court, it is clear that the learned first appellate Court had rightly observed that since the proceedings under Section 163 of the H.P. Land Revenue Act have been initiated against the defendant, the jurisdiction of the Civil Court was barred under Section 171 of that Act and in case, any infringement has been made on the Government land, the State can take appropriate action against the defendants. The learned first appellate Court had rightly observed that the plaintiff can still approach the Civil Court to get an appropriate relief in case any such legal right was adversely affected. There are no pleadings as to what particular right of the plaintiff was adversely affected. He had claimed the right to take the vehicle from the land of the Government and the Courts below have rightly observed that still there is sufficient road from which the right can be exercised by the plaintiff. No infringement of any specific right was alleged or proved by the plaintiff. The learned first appellate Court rightly observed that the suit was not filed in a representative capacity,

though the other persons were allegedly using that land for similar purpose. It was also rightly observed that the suit was not filed under the provisions of Section 91 C.P.C. for removal of nuisance after complying with the procedure prescribed under that provision.

Thus from the above discussion, it is clear that from whichever angle the findings of the first appellate Court are considered, no substantial question of law arises in this case and as such, there is no merit in the appeal, which deserves to be dismissed and the findings recorded by the learned first appellate Court are liable to be affirmed.

In view of the above discussion, the appeal filed by the appellant is dismissed.

**( V.K. Ahuja ),**
**Judge**

**December 12, 2006**
**(BSS)**